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October 18, 2002  
DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Hearing Officer's Decision**

Name of Case: Personnel Security Hearing

Date of Filing: June 17, 2002

Case Number: VSO-0561

This Decision concerns the eligibility of XXXXXXX (hereinafter referred to as "the Individual") to retain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." A local Department of Energy Security Office (DOE) suspended the Individual's access authorization under the provisions of Part 710. The issue before me is whether, on the basis of the evidence and testimony in this proceeding, the Individual's access authorization should be restored. For the reasons stated below, I find that the Individual's access authorization should not be restored.

**I. BACKGROUND**

The present proceeding resulted from an Inspector General investigation, which revealed that the Individual had fabricated information in a letter to a loan officer. A Personnel Security Interview (PSI) of the Individual was conducted on April 8, 2002 (the April 8, 2002 PSI). The April 8, 2002 PSI failed to resolve DOE's security concerns about the Individual. Accordingly, the Individual's access authorization was suspended and an administrative review proceeding was initiated. *See* 10 C.F.R. § 710.9.

On May 20, 2002, the DOE issued a letter notifying the Individual that the DOE possessed information that created a substantial doubt concerning her continued eligibility for access authorization (the Notification Letter). The Notification Letter specifies a single area of derogatory information. This derogatory information meets the criteria set forth at 10 C.F.R. § 710.8(l). The Individual then filed a request for a hearing. This request was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as Hearing Officer. A hearing was held under 10 C.F.R. Part 710. At the hearing, the DOE called two witnesses: a DOE Personnel Security Specialist and the Individual. The

Individual called two witnesses and testified on her own behalf. The record of this proceeding was closed on September 19, 2002, when OHA received a copy of the transcript of the hearing.

## **II. STANDARD OF REVIEW**

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

When reliable information reasonably tends to establish the validity and significance of substantially derogatory information or facts about an individual, a question is created as to the individual's eligibility for an access authorization. 10 C.F.R. § 710.9(a). The individual must then resolve that question by convincing the DOE that restoring her access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). In the present case, the Individual has not convinced me that restoring her security clearance would not endanger the common defense and security and would clearly be in the national interest.

## **III. FINDINGS OF LAW AND FACT**

The derogatory information at issue in the present proceeding involves the Individual's actions concerning a real estate transaction. The Record indicates that the Individual and her sister agreed to purchase a home as joint tenants in a distant state, where the Individual's sister resides. It is difficult to determine many details of this transaction, since the Individual's testimony and statements to DOE security officials are inconsistent and often at odds with the testimony provided by the other witnesses at her hearing. The Record clearly shows, however, that the Individual prepared a letter (the March 27, 2002 Letter), on official DOE Letterhead, stating that the Individual, who was at the time employed at a DOE facility located in one state, would be relocating to a DOE office in a second, geographically distant state in which her sister resides and would be retaining the salary and position that she held at the DOE facility in the first state. Tr. at 80, 95; PSI at 4. The Individual signed the March 27, 2002 Letter using the name of a co-worker, whom the Individual knowingly misrepresented as a "Human Resources Manager." Although the Individual has at times claimed that she used her co-worker's name with the permission of the co-worker, the evidence in the record strongly suggests otherwise (as

discussed below). The Individual then signed her co-worker's name to the March 27, 2002 Letter and submitted it to the loan officer overseeing the financing of the real estate transaction. <sup>1/</sup>

It is undisputed that, at the time of the March 27, 2002 Letter's preparation and its submission to the loan officer, the Individual had no plans to relocate to DOE's office in the second state. Nor was the co-worker whose name was signed as a Human Resources Manager actually employed as a Human Resources Manager. Instead, the co-worker was employed as a mail room clerk in the Individual's office. Moreover, the Individual admitted that she had asked the co-worker to deceive the mortgage company by representing herself as a Human Resources Manager when a mortgage company employee called to verify the Individual's employment. Tr. at 82, 96-97; PSI at 41-42, 44-45, 48. When this derogatory information came to the attention of a local DOE Security Office, it issued a Notification Letter, which charges that the Individual has "engaged in unusual conduct or is subject to circumstances which tend to show that [she] is not honest, reliable, or trustworthy; or which furnishes reason to believe that [she] may be subject to pressure, coercion, exploitation, or duress which may cause [her] to act contrary to the best interests of the national security." 10 C.F.R. § 710.8(l). The Notification Letter alleges:

[The Individual] admitted writing a letter in which she falsified information. [The Individual] wrote a letter dated March 27, 2002, to verify her employment for the purpose of purchasing a home. [The Individual] utilized DOE letterhead for this endeavor. She wrote, '[the Individual] will be relocating to [the second state] as of May 1, 2002 . . . Her salary and position will remain the same.' [The Individual] endorsed the letter by using the title 'Human Resources Manager' and signing the [co-worker's name].

. . . Additionally, [the Individual] requested that [the co-worker] deceive the mortgage company by pretending that she was the Human Resources manager when they called for employment verification.

Notification Letter at Enclosure 2. The derogatory information set forth in the Notification Letter raises serious security concerns about the Individual's ability to hold a DOE access authorization. The derogatory information indicates that the Individual engaged in deceptive and dishonest acts intended to deceive others in connection with a financial matter involving thousands of dollars. This conduct raises important security concerns. Consequently, I find that the local DOE security office properly invoked Criterion L in suspending the Individual's clearance.

The Individual does not contest the accuracy of the facts set forth in the Notification Letter. Rather, the Individual attempts to mitigate or explain her actions by making a number of contentions. Specifically, the Individual contends that (1) her actions, while wrong, were not serious enough to merit revocation of her access authorization, (2) her actions were prompted by a desire to assist her sister, and (3) she was manipulated into conducting these falsifications by a loan officer.

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<sup>1/</sup> The co-worker's signature which appeared on the March 27, 2002 Letter was misspelled. Tr. at 29.

The Individual's first argument minimizes the seriousness of her actions. Since the Individual is currently employed as a DOE Personnel Security Specialist, she should recognize that falsifying a letter on DOE letterhead, convincing a co-worker to lie on her behalf, knowingly providing false information to a potential lender, and being dishonest or deceptive during the adjudication of her security clearance all raise serious and significant concerns about her honesty, reliability and trustworthiness. Moreover, this argument exhibits a fundamental misunderstanding of the responsibilities inherent in her being entrusted with access to classified information or special nuclear material.

The Individual's contention that she committed the dishonest acts as part of a well-intentioned attempt to assist her sister is not supported in the Record. The Individual maintained that her motivation to participate in the real estate transaction was simply to help her sister by giving her sister money for the down payment and co-signing on her sister's loan. Tr. at 76-77, 85-87, 91-92, 94-95, 99. However, her sister's testimony indicated that under her understanding with the Individual, the Individual was to receive a half ownership of the property, including half of any profits from its resale. Tr. at 46, 48, 53-55, 57-60. 2/ Because the Individual's testimony concerning her motivation for participating in the real estate transaction is at odds with the account of the transaction provided in her sister's testimony, I find that it does not mitigate the security concerns at issue in the present case. 3/

Nor does the Individual's contention that the loan officer manipulated her into providing false information mitigate the security concerns at issue in the present case. The Individual claims that she performed the dishonest acts at issue at the suggestion of the loan officer. Tr. at 81-85, 87, 96-97. The Individual indicated that she went along with the loan officer's suggestions because she did not want her sister to lose her new home. Tr. at 81, 85, 87, 99. Even if these assertions are accurate, they do not provide any mitigation of security concerns. Indeed, 10 C.F.R. § 710.8(l) specifically provides in pertinent part that conduct "which furnishes reason to believe that an Individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of national security" itself raises security concerns.

The Individual has failed to provide evidence or an explanation which sufficiently mitigates the derogatory information. In fact, the Individual's actions during this proceeding and the investigation which preceded it raise additional concerns about the Individual's honesty, reliability and trustworthiness.

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2/ The Individual noted that she presently owns four investment properties besides her interest in the property at issue in this case. PSI at 10, 12, 14.

3/ If I were convinced that the Individual's dishonest acts were motivated solely by a concern for her sister's welfare, I would find that concern to be a mitigating factor. However, the mitigation would still be insufficient to resolve the serious security concerns at issue in the present case.

On a number of occasions, the Individual admitted that she had prepared the March 27, 2002 Letter. These admissions occurred during a April 8, 2002 Personnel Security Interview (PSI) of the Individual, the Individual's testimony at her co-worker's personnel security hearing (CWPSH), and her own security hearing. Tr. at 95; PSI at 4, 10. The Individual further admitted that she had signed her co-worker's name on the letter. *Id.*

However, during the PSI, the Individual repeatedly claimed that she had signed her co-worker's name to the March 27, 2002 Letter with the permission of the co-worker. *Id.* at 4, 8, 15, 17, 29, 41-43. At the CWPSH, the Individual initially continued to assert that she had signed her co-worker's name to the March 27, 2002 Letter with the permission of the co-worker. Transcript of CWPSH at 23. However, under questioning from the Hearing Officer, the Individual's story changed:

BY THE HEARING OFFICER:

Q. So you signed that. Did [the co-worker] have any idea that you were signing on her behalf?

A. She did, but I told her I was using her name and she said yeah.

Q. You said you were using her name? Did you tell her that you were going to sign her name on a piece of paper?

A. Maybe not in those words, but I showed her the paper. I gave her a copy of the paper.

Q. You did?

A. Yeah.

Q. And why didn't you just have her sign it?

A. Because when [the loan officer] called me, it was like she needed it right then and there. She was like she needed it, rush something, you know. So I typed it up and did it. I wasn't even thinking, to tell you the truth. That was my fault. That shouldn't have happened, I did it, and I'm sorry.

Q. So you did it and then you went back to [the co-worker] and said, "Here is what I've done?"

A. Yeah, I told her. I gave her a copy. I wasn't going to hide nothing. Like I told you earlier, if I was going to be all sneaky and stuff, I wouldn't have even asked her, I wouldn't even have started nothing, period.

Q. The point I am trying to get to is, before you signed that, did you call [the co-worker] up or go talk to her and say, "I'm going to sign your name on something?"

A. Not in those words.

Q. All you said to her was --

A. "Can I use your name?"

Q. Can I use your name.

A. Yeah.

CWPSH at 23-24. The Individual's co-worker also testified that she did not know that the Individual was going to use the co-worker's name in the March 27, 2002 Letter. *Id.* at 28. Accordingly, I am

convinced that the Individual (1) signed her co-worker's name on the March 27, 2002 Letter without obtaining the prior authorization of the co-worker, and (2) was not completely honest about the circumstances under which she used her co-worker's identity in the March 27, 2002 Letter during the PSI, the CWPSH, and the Individual's security hearing. 4/

The dishonest actions discussed above have strongly convinced me that the Individual "is not honest, reliable, or trustworthy."

#### IV. CONCLUSION

For the reasons set forth above, I conclude that the Individual has not presented evidence that warrants restoration of her access authorization. Since the Individual has not resolved the DOE's allegations under Criterion L, the Individual has not demonstrated that restoring her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's access authorization should not be restored.

Steven L. Fine  
Hearing Officer  
Office of Hearings and Appeals

Date: October 18, 2002

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4/ False statements made by an individual in the course of an official inquiry regarding a determination of eligibility for DOE access authorization raise especially serious issues of honesty, reliability, and trustworthiness. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *See, e.g., Personnel Security Hearing* (Case No. VSO-0281), 27 DOE ¶ 82,821 at 85,915 (1999), *aff'd*, 27 DOE ¶ 83,030 (2000) (terminated by OSA, 2000); *Personnel Security Hearing* (Case No. VSO-0013), 25 DOE ¶ 82,752 at 85,515 (1995) (affirmed by OSA, 1995).

